Supreme Court, U.S.
FILED

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OFFICE OF THE CLERK

No : 02-1905

In The

Supreme Court of the United States

PEPI SCHAFLER

Petitioner

v

SCOTT D. FIELD and
REZNICK, FEDDER & SILVERMAN

On Petition for Writ Of Certiorari
To The Fourth Circuit Court of Appeals

APPENDIX TO PETITION FOR WRIT OF CERTIORARI

Pepi Schafler , BA, MSSS, JD, PHD
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Walnut Creek, California 94596
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25pp

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UNITED STATES COURT OF APPEALS

FOR THE FOURTH CIRCUIT

Filed December 17, 2002

DR. PEPI SCHAFLER
Plaintiff-Appellant

v

SCOTT D. FIELD & REZNICK
FEDDER & SIVERMAN

Defendants -Appellees

No: 02-1905
Ca-02-1308-AW

On Petition for Rehearing and Rehearing En Banc

The appellant's petition for rehearing and rehearing en banc was submitted to this Court. As no member of this Court or the panel requested a poll on the petition for rehearing en banc, and as the panel considered the petition for rehearing and is of the opinion that it should be denied.

It is ORDERED that the petition for rehearing and rehearing en banc is denied.

For the Court,
/s/Patricia S. Connor

Clerk

JUDGMENT

Filed November 13, 2002

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

DR. PEPI SCHAFLER
Plaintiff-Appellant

NO: 02-1905
CA-02-1308-AW

v

SCOTT D. FIELD, REZNICK, FEDDER & SILVERMAN
Defendants -Appellees

Appeal from the United States District Court for the District of Maryland at Greenbelt

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In accordance with the written opinion *of this Court filed this day, the Court affirms the judgment of the District Court

/s/ Patricia S. Connor

Clerk

* No written opinion has been provided to Appellant

Filed : September 13,2002

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

02-1905 Schafler v Field
CA-02-1308-AW

ORDER TO PROCEED ON INFORMAL BRIEFS

This appeal was docketed on 8/20/02. Pursuant to Local Rule 34 (b) , this case shall be submitted on **informal briefs.** The informal briefing form is attached. Informal brief should be mailed to the Court, with copies to all parties . Appellant's Brief original and one copy, Appellee's Brief original and one copy. The Court obtains the record from the district court in informally briefed cases. Therefore no appendix is necessary.

Whenever any pro se appeal is filed, the clerk shall notify the appellant that the appellant shall file within twenty one days after such notice , an informal brief. The informal brief may be submitted on a form provided by the clerk, and shall provide the specific information required by the form.

Patricia S. Connor
Clerk

IN THE UNITED STATES DISTRICT COURT

THE DISTRICT OF MARYLAND,

SOUTHERN DIVISION

Filed July 25, 2002
Faxed to Plaintiff

Civil Action No: AW-02-1308

PEPI SCHAFLER

Plaintiff

v

SCOTT FIELD and
REZNICK, FEDER & SILVERMAN

Defendants

MEMORANDUM OPINION

Pending before the Court are several motions.(1) Defendant's Motion to dismiss (8-1) (2) Plaintiff's Motion for Order Directing Defendant to serve Plaintiff with Response to the Complaint (12-1) and Plaintiff's Motion to Extend Time for Response(12-2). The Court has reviewed the pleadings and applicable law and has determined that no hearing is necessary. See D. Md .R. 105 (6) . For the reasons stated below , the Court will grant Defendant's Motion to Dismiss and will grant Plaintiff's two motions.

BACKGROUND

This is the second suit filed in this Court by Plaintiff against Defendants for various claims related to Defendant Field's performance as the chapter 7 trustee Plaintiff's bankruptcy case. On August 15, 2001 , this Court granted Defendant's Motion to dismiss for lack of subject matter jurisdiction on grounds that Plaintiff failed to obtain leave from the District of Maryland Bankruptcy Court before suing trustee Fields , See Schafler v Fields , Aw-01-984, slip-op at 4 (D. Md Aug 15, 2001) , aff'd No 01-2118 (Fourth Cir Feb 5, 2002) . Plaintiff now reasserts many of the same claims in her second suit filed on April 15, 2002 . The issue before the Court today is whether Plaintiff's 2nd suit is barred by res judicata , i.e. claim preclusion, due to the Court's dismissal of Plaintiff's first suit for lack of subject matter jurisdiction.

Under the doctrine of res judicata , or claim preclusion , three elements must be satisfied: (1) a judgment on the merits by a prior suit resolving (2) claims by the same parties or their privies, and (30 a subsequent suit based on the same cause of action. Aliff v Joy Mfg Co , 914 F 2nd 39 42 (4th Circ1990) citing Montana v United States, 440 U.S. 147, 153, 99 S.Ct 970, (73 (1979) In the current case the second and third elements have been satisfied . Plaintiff now sues the same two Defendants as in the earlier suit for claims related to Defendant Field's motion to reopen Plaintiff's

bankruptcy case. Thus , the second suit is based on the "same transaction or series of transactions as the claim resolved by the prior judgmnet. id(quoting Harnett v Billman , 800 f 2nd 1308 , 1313 (4th Cir 1986).

The real issue here centers on whether the Court issued a final judgment on the merits in the prior suit. As noted by Plaintiff , it is well established that a suit dismissed for lack of jurisdicrtion is not a final judgment on the merits. Hughes v United States 71 U.S. 232, 237 (1866), see also Fed R. Civ Pro 41 (b). Thus it , it would seem that Plaintiff,s second suit is not barred by res judicata . However Plaintiff has failed to cure the jurisdictional defect found in the first case-i.e. she has not obtained leave of the bankruptcy court to sue the chapter 7 trustee, and therefore , she cannot properly refile the suit. Se 18 A Charles Alan Wright , et al Federal Practice and Procedure # 4435 (2nd ed 2002). Dismisal for lack of jurisdiction, should not preclude a second action on the same claim that overcomes the initial defect in jurisdiction.

Plaintiff's opposition focuses on the impropriety of the Court's rationale for dismissing the first suit . This argument is moot given Plaintiff's failure to cure the jurisdictional defect. However even if the argument was valid, relitigation of the Court's decision about subject matter jurisdiction would nonetheless be barred by collateral estoppel.Collateral estoppel i.e. issue preclusion, generally prevents relitigation of an issue of fact or law that was settled in an earlier case.

SeeAllen v McCurry, 449 U.S. 90, 94 101 S.Ct 411 (1980).Collateral estopel is applicable when a party establishes that: (1) the same issue sought to be precluded is dentical to the one previously litigated. (2)the issue must have been actually determned in the prior proceeding.(3)determnation must have been a critical and necessary part of the decision in the prior proceeding (4) the prior judgment must be final and valid ,(5) and the party against whom estopell is asserted must have had full and fair opportunity to itigate the issue in the previous forum.Sedlack v Brasswell Serv. Group Inc.134 F3d 219, 224 (4th Circ 1998)Although the Court need not reach the issue of collateral estoppel, it is apparent that with regards to subject matter jurisdiction requiring leave of the bankruptcy court , all five factors were met. Hence the issue of subject matter jurisdiction is barred by colateral estoppel.

CONCLUSION

For the reasons stated above , the Court will grant Defendant's Motion to dismiss. Because the relief sought by Plaintiff 's Motion for order directing Defendants to serve Plaintiff with his response to the complaint and motion to extend time of Plaintiff has been met, the court will likewise grant these motions. An order Consistent with this memorandum opinion will folow.

July 25 2002

ss. Alexander Williams Jr.
United States District Judge

RELEVANT PAGES FROM CHAPTER SEVEN PETITION

Date Filed : 3/26/96
Case No: 96-12203DK
Court: Southern Division , District of Maryland
Petitioner's then address: 4921 Cloister Drive
Bethesda Md, 20852
Counsel of record: Daniel Kennedy III
Barkley & Kennedy , 51 Monroe Street
Rockville Md. 20850

Pg 2 of form: assets and potential assets:

Line 19: Trustee of trust, the beneficiaries of whom are debtor's adult children. Debtors interest 1.00
Location : In Debtor's possession

Line 20: Dismissed law suit against Marine Midland Bank. Debtor's interest 1.00
Location : In Debtor's possession.

Divorce claim against ex-husband
Debtor's interest 1.00
Location: In Debtor's possession

11 U.S.C.A # 341 meeting , scheduled May 1, 1996.

REPORT OF "341" INTERROGATORIES

Date of meeting 5/1/1996, Case No: 96-12203

Case data repeated

Line for Claims: Claim against Banks-suit filed was dismissed ; **suit for $96.500**

I hereby certify that I examined the debtor(s) on the date shown above , and that the debtor answered as indicated above.

Marked concluded.- there is space for continued to ...
But this is marked concluded.

Date :5/1/96

Signed Trustee Scott Field.

UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF MARYLAND

Case No: 96-12203 Filed May 2, 8.23 am, 1996
Chapter Seven

TRUSTEE'S REPORT OF NO DISTRIBUTION

I, SCOTT D. FIELD , having been named trustee of the above named Debtor , report that I have neither received nor paid any money on account of this estate except exempt property; that I have made a **diligent inquiry** into the financial affairs of the Debtor (s)and the location of property belonging to the estate; and that there is no property available for distribution from the estate over and above that exempted by law, and the Debtor's 341 meeting has been held and concluded.
Pursuant to FRBP 5009, I hereby certify that the estate of the above named Debtor has been fully administered. I request that this report be approved , **and that I be discharged from any further duties as trustee.**

Dated : 5/1/96

ss/ Scott Field
Trustee

Re: Bank Claim

Pepi S .Summer,** Appellant v Marine Midland Bank, et al Respondents , et al Defendant Marine Midland , Third party Plaintiff - Respondent, v Donald L.Summer* Third party Defendant-Respondent.

0592

SUPREME COURT OF NEW YORK, APPELLATE DIVISION, FOURTH DEPARTMENT

227 A.D.2nd 932;643 NN.Y.S.2d 256; 1996 NY App. Div

May 31, 1996 Decided

May 31, 1996 Filed.

Prior History: Appeal from Order of Supreme Court Erie County, Judge Joslin, -Summary Judgment.

Judges:Present=Lawton, J.P. Wesley, Calahan, Balio and Davis JJ.
Opinion:(932, 257) Appeal from order insofar as it dismissed third -party complaint unanimously, dismissed and order reversed on the law without costs , motion and cross motion denied, **and complaint reinstated.**
This is followed by a memorandum opinion of about 250 words.
* Petitioner's name was Summer then
* Donald L. Summer is the ex husband who stole the checks and converted them.

UNITED STATES BANKRUPTCY COURT
THE DISTRICT OF MARYLAND
6500 Cherrywood Lane, Greenbelt , MD 20770

Case No: 96-12203
Chapter 7

Re: Pepi Schafler(Summer
4921 Cloister Drive
North Bethesda* Md. 20852

FINAL DECREE

The estate of the above -named has been fully administered. The deposit required by the plan has been distributed.

IT IS ORDERED THAT:

Scott Field is discharged as trustee of the estate of the above named and the bond is cancelled.

The chapter 7 case of the above named debtor is closed.

Dated 7/9/96

/ss/ Duncan Keir
U.S. Bankruptcy Court Judge

* The adress in the original document is in error . It reads North Beach Md. No such place.

DONALD L.SUMMER*
6096 N.W. 24th Street
Boca Raton, Fl 33434
553-6595-Cellular

To: Scott Fields, Trustee In Bankruptcy

From: Donald L. Summer

Re: Pepi Schafler /BK No 122203 DK

Date: April 27, 1998

Dear Mr. Fields:

She listed as dismissed an action in Monroe County against Marine Midland bank . In reality that action is still pending in which she is the Plaintiff claiming I believe $83.ooo and it is proceeding in the Erie County Court System.

Very Truly Yours
Donald L. Summer

*Donald Summer, is an attorney by profession was disbarred at the time, and sometime later reinstated.

UNITED STATES BANKRUPTCY COURT
DISTRICT OF MARYLAND
Southern Division

Re: PEPI SCHAFLER

Case No: 96-1-2203-DK

TRUSTEE'S MOTION TO REOPEN CASE AND VACATE FINAL DECREE*

SCOTT D. FIELD, Trustee (the "TRUSTEE") for the above -referenced matter , requests the Court to reopen the above captioned chapter 7, and respectfully represents as follows:

1. On March 26, 1996, Pepi Schafler filed a voluntary petition for relief pursuant to Chapter 7 of the United States Bankruptcy Code (the "bankruptcy code")

2. The section 341 Meeting of Creditors was held in the office of the U.S. trustee.

3. Subsequent to the meeting of creditors the trustee filed a "no distribution report" with this court.

4. This Court entered a Final Decree closing this case on July 9, 1996

5. **The trustee has recently received information from an interested party regarding potential undisclosed assets of the debtor.**

6. The trustee therefore requests that the above captioned case be reopened to permit the trustee to investigate and pursue recovery of the potential estate assets

WHEREFORE , the trustee respectfully requests that the Court reopen the Chapter 7 case of Pepi Schafler and vacate the Final Decree entered on July 9, 1996 and for such further relief as this Court deems just and proper.

Respectfully submitted
ss/SCOTT D FIELD

Dated 4. 28. 98

Scott D. Field Esquire
Chapter 7 trustee
4520 East West Hwy
Suite 300
Bethesda Md, 20814

* This is the full text verbatum copy of the document.

COURT OF APPEALS
of Maryland
Robert C. Murphy Courts of Appeal Building
361 Rowe Boulevard
Annapolis MD, 21401-1699

January 3, 2003*

Dr. Pepi Schafler
642 Preakness Drive
Walnut Creek, Ca , 94596

Re: Scott D. Field

Dear Dr. Schafler:

In reply to your inquiry , this is to advise that the name set forth does not appear on our records as ever having been admitted to the Bar of this Court.

Very Truly Yours

/ss/ Alexander l. Cummings
Clerk

* this was petitioner's second inquiry to the Court on the same topic , to make sure of the facts, as this has serious implications of extortion , plundering and "double dipping" into bankruptcy estate funds.

UNITED STATES BANKRUPTCY COURT
DISTRICT OF MARYLAND
Southern Division

RE: PEPI SCHAFLER Case No: 96-01-2203-DK

ORDER REOPENING CASE
AND VACATING FINAL DECREE *
Entered May 7, 1998

Upon consideration of the trustee 's motion to reopen case and vacate final decree and after notice and opportunity for a hearing , and it appearing that the relief sought should be granted , it is this 6th day of May, 1998 by the United States bankruptcy court for the district of Maryland. Ordered that the trustee's motion to reopen case and vacate final decree is hereby granted, and it is further ordered that this case is hereby reopened under chapter 7, of the bankruptcy code, and irt is further ordered that the **United States trustee is authorized to administer any and all remaining assets of this estate, or to appoint **a chapter 7 trustee to administer such assets.**

/ss/ Duncan Kier
United States Bkcy Court
District of Maryland

This is the full text.

* This form order was obviously submitted by opponent: there was no service and hearing: the date of the order is handritten ; considering that the motion was filed on April 28, and the order signed on May 6, and at least two

weekend days , and consideration for mailing there was no time for service , a response or a hearing, and none was intended. Judge Kier signed an order stating so "called' facts, yet knowing with 100% certainty that they were lies. He is part of the corrupt conspiracy.

**1. Kier in the order says that the US trustee should appoint a trustee, because that is the practice now. The Barton doctrine invoked by the District Court as stare decisis and the need for court permission addresses a case in which the court appointed the trustee.

2. judge Kier's order is inconsistent, schizophrenic, and illustrative of lack of judicial integrity by the court, and the debauchery that is epidemic in the bankruptcy industry including the courts. The first sentence of the order to reopen and several others thereafter, Kier speaks of the "truste"' his motion, and his right. But then in the last paragraph he says: that the US trustee is "authorized to appoint a trustee", which would mean that there is none. If a debtor were to present the same inconsistent, inane, disingenuous corrupt statement to someone like judge Kier, he would label that individual a thief, a crook, a swindler, a fraud, a criminal, berate him, and probably file a criminal complaint.

THE PRIOR DISMISSAL IN THIS MATTER
SELECTED PARAGRAPHS*

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND
SOUTHERN DIVISION

Dr. PEPI SCHAFLER

Civ. Act. No: AW-01-984

Plaintiff

Dismissed Aug 15, 2001

v

SCOTT D. FIELD and
REZNICK, FEDDER & Silverman

Defendants

MEMORANDUM OPINION

Presently before the Court are Defendants Scott D. Field et al, Motion to dismiss pursuant to F.R.C.P. 12 (b) (6) and Plaintiff's Motions. Oppositions have been filed, and no hearing is deemed necessary. Local Rule 105.6. For the reasons discussed below , the Court will grant Defendants Motion to dismiss.

Defendants Motion to dismiss.

Defendants argue that under the *Barton* Doctrine , this Court laks subject matter jurisdiction over the complaint because Plaintiff failed to obtain leave

from the appointing court (the Maryland bankruptcy court) before suing Field.* *Barton v Barbour , 104 U.S. 126 (1881)* He stated that this Court held that a trustee cannot be sued without leave of the bankruptcy court .**The holding prohibits a party from suing a trustee in a non appointing court for acts done in the official capacity of the trustee and within the trustees's authority as an officer of the court.*** Not raised by Plaintiff, the only exception found under this doctrine is U.S.S.C. 959(a) , which allows suits against trustees "with respect to any of their acts or transactions" in carrying on business connected with such property" without prior approval. There is no evidence that Plaintiff's complaint against trustee is rooted in conduct while carrying on business with plaintiff's property. Based upon the *Barton* and an unpublished opinion in *Gordon v Nick, 162 F 3d 1155, (4th Cir 1998)* this Court will grant Defendant's Motion to dismiss. ****

* This decisional Paragraph is completely inaccurate , incoherent and evocative of the volitional acts of bias against Petitioner, in favor of the "favorite boys", and is an almost verbatum copy of of what Defendants said in their responses, they providing knowingly false information to the tribunal, but the tribunal does care. The trustee in Barton was hired by the District Court, and was operating businesses under the supervision of the Court. There were no bankruptcy courts then. The suit against Barton is not about malfeasance on his part, but rather he is the "respondent superior" for the railroad and is accused of not doing a good job running the train.** Field was hired by the United States trustee. he is not hired by the court. he solicits for jobs. *** Field is not an officer of the court. he has to get the court to sign orders , and approve what he does. Relying on Barton is deception for convenience, and is clearly as well as outrageously not on point.

**** Barton is also about business and the matter at instant is not. But the District Court and judge Williams applies it anyway. He immediately changes his position however and says that 28 U.S.C. # 959 (a) allows a trustee to be sued if he is involved in a business relationship, but since the instant matter is not than it is inapplicable.

In a paragraph on background the District Court is negligently incoherent, inaccurate and repeats all the false, self serving exploitative fraudulent statements made by Field on his behalf and behalf of his partners. The fact that the Fourth Circuit did not notice it, is further evidence that nobody read this Appeal.
On page 1, describing the filing on March 26, 1996 , Judge Williams omits the date of the creditors meeting, and that as soon as the meeting was over on May 1, 1996 Field submitted to the bankruptcy court a false statement stating that he had conducted a "thorough and dilligent" investigation, and wishes to be dismissed, likewise dated May 1, 1996.(appendix page 10).*

Judge Williams ignores the fact that when Field sought reopening he had, no standing . He goes on: <u>On June 24 1996, the United States Trustee *appointed defendant Field as the trustee in bankruptcy retroactive to May 7, 1998. ?</u>
The Court goes on (pg 2 of backgound) to state a further inaccurate sequence of events not based on facts, and repeats the knowingly self serving deceptive and false statements made by Field and his counsel, regarding a chapter 13 conversion, and Petitioner's relocation to California.** It is noteworthy that the District Court is silent regarding the fraud on the court at reopening.

* The issue that field did not do any investigation into the case , and on the same day that he received information that required investigation , even out of state inquiries, and yet he lied to the court about it is exemplary as to what this matter is about: Lies-fraud-coverup.

** after reopening petitioner was really angry that the ex husband is still able to harass, and sought guidance from an attorney that specializes in bankruptcy who enlightened her about the goings on that Field is knowsn for this kind "ambush" and that if Petitioner were to pay him of say with $30.000 he would go away, and the alternative is a conversion to chapter 13. petitioner's attorney filed a motion to convert on August 28, 1998; it took the court two months grant that motion, which was October 28, 1998.When the former trustee sought reopening the court took five days to grant his request. In November 1998 a tragedy developed in Petitioner's family: her only sibling suddnely became life threateningly ill in California, and Appellant needed to relocate there as soon as possible, to help save or prolong his life and be with him and his wife and child. She was departing in six weeks. She asked the bankruptcy court to speed up confirmation of the plan, and judge Kier refused; he also refused to transfer the case at once to Northern California. On December 26, 1998 Petitioner filed a motion for Kier to reconsider the denials , to speed up and to transfer jurisdiction. he still refussed., and set a hearing for Januray 28 , 1999. Petitioner had left Bethesda Md. permamnetly on December 31, 1998, and could not returnJudge Kier is not only corrupt, disingenuous and sleazy, but also mean.
On February 25, 1999 Kier held an exparte hearing with his favorites there: Field and his counsel, and Field knowingly provided Kier with the false information provided by the ex husband regarding the bank claim. Consequently he did not transfer the chapter 13 ready for confirmation, but rather returned the case to the reopended chapter 7. All these orders and the false claims and false document by Field are held by the ckerks of the respective courts.

Opposition or Reply Briefs Unavailable For Filming